IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1281 OF 2005

Shiv Prakash Sheth
R/o.9th Floor, Usha Kiran
Building, Tardeo, Mumbai. ...Petitioner

V/s.

1. The State of Maharashtra
High Court , Bombay.

2. The Employees State Insurance
Corporation,
Plot No.8, Road No.7, MIDC,
Andheri(E), Mumbai:400 093.

3. Joint Director In-charge,
Employees State Insurance
Corporation,
Panchdeep Bhavan, Plot
No.8, Road No.7, MIDC,
Andheri(E), Mumbai:400 093.

4. Recovery Officer,
Sub-Regional Office, Marol,
ESIC, Panchdeep Bhavan,
Plot No.8, Road No.7,
MIDC, Andheri(E),
Mumbai:400 093. ...Respondents

Mr.Percy D. Ghandy with Madhukar Harmawar for Petitioner.
None for Respondents.

CORAM : V.M. KANADE, J.

DATED : 2nd APRIL, 2007.

ORAL JUDGMENT:

1. Heard learned counsel appearing on behalf of the Petitioner. None appears on behalf of the Respondents.

2. The Petitioner is challenging notices of demand which have been issued by the Joint Director U/s.85(B) of Employees State Insurance Act, 1948(hereinafter referred to as "the said Act) and Order dated 24/03/2003, also Recovery Certificates which were issued thereafter dated 29/04/2003 and 23/06/2003 and Show Cause Notices dated 23/12/2003 and 09/09/2004 and further Demand Notices which were issued dated 09/11/2004, 14/12/2004, 29/12/2004 and 17/01/2005.

3. Brief facts which are relevant for deciding this petition are as under:-

The petitioner is a Director of M/s.Sheth Industries(P) Ltd. This company is the proprietor of M/s.Simplex Wollen Mills. The said company has a factory in Thane District. This company was declared as sick company sometimes in the year 1986 and was

referred to the B.I.F.R. Under the provisions of the SICA, 1946.

4. It is case of the Petitioner that the Respondent No.2, 3 and 4 are seeking to recover company's contribution towards the ESIC dues of the company from the Petitioner. It is the case of the Petitioner that recovery proceedings have been initiated personally against the Petitioner on the ground that the Petitioner was Director of the said company and accordingly, impugned order was passed on 24/03/2003 and thereafter, various demand notices have been issued by the Respondents.

5. It is submitted by the learned counsel for the Petitioner that though the Petitioner was director of said company, it does not fall within the purview of definition of Principal Employer as defined U/s.2(17) of Employees State Insurance Act 1948. He submitted that the Supreme Court in the case of **Employees' State Insurance Corporation V/s. S.K. Aggarwal & ors. reported in AIR 1998 Supreme Court 2676** has held that director of company can not be treated as the Principal Employer and that no action for the recovery can be made from any other person other than Principal

Employer. Learned counsel for the Petitioner has invited my attention to the said judgment and has submitted that ratio of this judgment squarely applies to the facts of the present case.

6. He invited my attention to the impugned order and also demand notices which have been issued and pointed out that notices have been issued personally against the Petitioner and not only against the Company. He submitted that therefore, no action would be taken against the Petitioner since he was merely a Director and not the Principal Employer. He also submitted that Respondents are claiming contributions dues from the company for the period from 1976 to April 1986 and even otherwise this demand is clearly barred by limitation and therefore, even on merit the Respondents are not entitled to make the demand for damages of the contributions beyond period of limitation.

7. I have perused the impugned order as also demand notices which are issued by the Respondents. In my view, ratio in the judgment in case of **Employees' State Insurance Corporation V/s. S.K. Aggarwal & ors.(Supra)** is clearly applicable to the facts

of the present case. Under the provisions of the Employees' State Insurance Act, 1948, the term Principal Employer has been defined as under:-

> "Section 2(17):- "principal employer" means-
>
> (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named;
>
> ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department;
>
> iii) in any other establishment, any person responsible for the supervision and control of the establishment."

8. It is an admitted position that the Employees' State Insurance Act does not define Principal Employer though there are certain provisions enacted where term employer is used. Apex Court while dealing with this question as to whether director can be treated

as Principal Employer held that when the company owns factory and itself would be employer of its employee at the Head Office and therefore, Managing Director or any other Director can not be made personally liable and contribution can be recovered from the company and the Principal Employer. First submission made by the learned counsel for the Petitioner will have to accepted. Impugned order, therefore, which is issued against the Petitioner in his capacity as a Director is set aside.

9. Further, so far as second submission made by the Petitioner regarding demand being time barred is concerned, in my opinion, said submissions can not be gone into, primarily, because the Petitioner not being employer can not raise this objection on merits. It is clarified however, that it is open for the company to raise this objection in respect of notices issued against the company.

10. In the result, writ petition is allowed in terms of prayer clause(b) & (c). Rule is made absolute accordingly. It is clarified that the aforesaid orders are set aside qua the Petitioner.

. Writ Petition is disposed of accordingly.

V.M. KANADE, J.